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July 12, 2023

VIA ECF

The Honorable Victor Marrero
Senior United States District Court Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: *United States v. Rafael De La Cruz*
22 Cr. 304 (VM)**

Dear Judge Marrero:

Please recall that I represent Mr. Rafael De La Cruz in his defense of the above-referenced matter. Sentencing is currently scheduled for August 18, 2023. I write to inform the Court that, before proceeding to sentencing, Mr. De La Cruz intends to move to withdraw his guilty plea and enter a new guilty plea to Count One of the Indictment, pursuant to a written plea agreement. The Government has informed me that it will not object to Mr. De La Cruz withdrawing his guilty plea, provided he enters a new one.

On May 26, 2022, a one count Indictment was filed charging Mr. De La Cruz with violations of 21 U.S.C. §§ 841(b)(1)(A) and 846, a narcotics distribution conspiracy.

On December 15, 2022, Mr. De La Cruz appeared before United States Magistrate Judge James L. Cott and pleaded guilty to the only count charged in the Indictment, which carries a mandatory-minimum sentence of 10 years, without a plea agreement. Judge Cott recommended that Mr. De La Cruz's plea be accepted on that date.

On December 16, 2022, the United States Attorney General provided new charging guidance for federal prosecutors, including guidance concerning the charging of narcotics trafficking offenses that subject a defendant to a mandatory minimum sentence. The Attorney General indicated that the new policies should inform charging decisions even in pending cases where sentence has yet to be imposed.

In light of the changed policy, I requested that the Government reconsider whether Mr. De La Cruz could resolve his case with a plea to violating 21 U.S.C. §§ 841(b)(1)(C) and 846, which carries no mandatory minimum sentence. The Government has concluded that such a plea would be available in Mr. De La Cruz's case. The Government will consent to Mr. De La Cruz

Cohen, Frankel & Ruggiero, LLP

U.S. v. Rafael De La Cruz

July 12, 2023

Page 1 of 2


withdrawing his guilty plea, provided he pleads guilty pursuant to a new plea agreement setting forth the reduced charge.

Federal Rule of Criminal Procedure 11(d)(2)(B) allows a defendant to withdraw a plea of guilty after it is accepted by a court where the defendant can show “a fair and just reason for requesting the withdrawal.” Here, the Department of Justice has changed its criteria for charging narcotics offenses, and the Government has determined that Mr. De La Cruz can now resolve his case with a plea to an offense that does not carry a mandatory-minimum term. Under these circumstances, it is “fair and just” to allow Mr. De La Cruz to withdraw his plea, and I respectfully request that the Court permit Mr. De La Cruz to do so.

The Court has scheduled sentencing in this matter for August 18, 2023, at 11:00 a.m. Mr. De La Cruz intends to formally move to withdraw his plea at the outset of those proceedings and to plead guilty, pursuant to a plea agreement. The Government intends to consent to the withdrawal and entry of a new plea. If the Court is amenable, sentencing could follow immediately after entry of the new plea. Otherwise, the parties are available for a separate proceeding at the Court’s convenience.

Thank you for your consideration of this request.

Respectfully submitted,


Mark I. Cohen, Esq.

MIC/gmf

Cc: A.U.S.A. Thomas Burnett (via ECF)

The Court hereby directs Defendant in the above-captioned matter to schedule a change-of-plea hearing before the Magistrate Judge, and to propose a new sentencing date before this Court.

